

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
GRANTED BY KITSAP COUNTY TO
KENNETH S. HAMMER,

WILLIAM and BARBARA KNAPP,

Appellants,

v.

KITSAP COUNTY and
KENNETH S. HAMMER,

Respondents.

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
GRANTED BY KITSAP COUNTY TO
WILLIAM and BARBARA KNAPP,

WILLIAM and BARBARA KNAPP,

Appellants,

v.

KITSAP COUNTY

Respondent.

✓ SHB No. 85-17

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

SHB No. 85-18

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 THESE MATTERS, consolidated requests for reviews of shoreline
2 substantial development permits granted by Kitsap County to Kenneth
3 Hammer and William and Barbara Knapp for two docks in Port Madison Bay
4 on Bainbridge Island, came on for hearing before the Shorelines
5 Hearings Board; Lawrence J. Faulk, Gayle Rothrock (presiding), Wick
6 Dufford, Nancy R. Burnett, Rodney M. Kerslake, and Les Eldridge,
7 convened at Lacey, Washington on November 7, 1985.

8 Appellants appeared and were represented by Jonn C. Merkel of the
9 law firm of Merkel, Caine, Jory, Donohue, and Duvall.
10 Respondent/permittee appeared and was represented by Thomas C. O'Hare
11 of the law firm of Smith and O'Hare. Respondent County appeared and
12 was represented by Patricia K. Schafer, Deputy Prosecuting Attorney.

13 PROCEDURE

14 On April 24, 1983, Kenneth Hammer applied to Kitsap County for a
15 substantial development permit to construct a pier and float on
16 residential property on the shores of Port Madison Bay on Bainbridge
17 Island. After preliminary consideration, the application was tabled
18 by the County Commission on October 10, 1983. Subsequently county
19 processing of the Hammer's application was renewed and a public notice
20 as to this renewed consideration was published at the December 1984
21 and in early January, 1985.

22 On January 30, 1985, William and Barbara Knapp applied to Kitsap
23 County for a substantial development permit to construct a private
24 dock, ramp and float on residential property adjacent to Hammer's.
25 Public notice of this application was published in early February,

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1 1985.

2 Notice of public hearing on the Hammer and Knapp proposals was
3 published in early March 1985, and a public hearing was held on March
4 18, 1985, on both applications.

5 On April 22, 1985, the County Commissioners granted the
6 applications of both Hammer (No. 395) and the Knapps (No. 442),
7 subject to conditions. Both of these permit approvals were appealed
8 to this Board on July 3, 1985. The two cases (SHB 85-17 and 85-18)
9 were consolidated for hearing. The Department of Ecology and the
10 Attorney General filed a certification of both requests for review on
11 August 1, 1985.

12 A pre-hearing conference was held on August 13, 1985. As a
13 result, the presiding officer entered a Pre-Hearing Order which
14 identified seven issues to be considered in the evidentiary hearing.
15 An additional issue was set forth to be considered at a summary
16 judgment hearing.

17 The Pre-Hearing Order stated:

18 This order shall control the subsequent course
19 of proceedings unless modified for good cause
20 and with proper notice to all parties.

21 On October 9, 1985, the summary judgment motion was heard. The
22 question, as posed in the Pre-Hearing Order, dealt with whether the
23 revived Hammer application and Knapp application were "improperly
24 advertised and considered under terms of WAC 173-14-070, -080 and
25 [Kitsap County Shoreline Master Program] at 8-1, 2."

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1 The argument, however, focused not on the notices or their
2 publication but on whether the Hammer application was deficient as to
3 content. The assertion was that notice is fatally defective unless a
4 "proper" application is on hand at the time the notice is published.
5 The County lodged a motion to strike the summary judgment motion,
6 claiming that it was an attempt to insert a new issue, outside those
7 defined by the Pre-Hearing Order.

8 The Board denied the motion to strike. The Board also declined to
9 grant the summary judgment motion, believing that whether the Hammer
10 application was "proper" for purposes of the applicable notice
11 requirements should not be decided without further development of the
12 facts.

13 With the summary judgment motion, appellants filed a motion to
14 remand the Hammer application to the County. Though no such motion
15 was contemplated by the Pre-Hearing Order, the board entertained it.
16 The remand request was based on the asserted need to establish the
17 legal existence of a county road between the Knapp and Hammer
18 parcels. Determination of this matter was said to be necessary in
19 order for this Board to reach the recreational access question posed
20 in the appeal.

21 The Board denied the remand motion, ruling that for purposes of
22 shorelines review, it could assume the availability of public access
23 to the beach and water between the neighboring properties. The Board
24 reasoned that if no impermissible public access interference were
25 found to flow from the Hammer project, it would not matter whether

1 the public road exists. If the contrary were found, the parties could
2 then find out about the legal existence of the road in an appropriate
3 forum. The Board did not feel it necessary to defer hearing the
4 entire case pending resolution of the road question.

5 On October 21, 1985, appellants moved to amend the Pre-Hearing
6 Order to add an issue regarding an alleged zoning ordinance violation
7 in connection with Hammer's property. The Board denied this request
8 determining that "good cause" had not been shown for disturbing the
9 Pre-Hearing Order. The ruling stated:

10 Our authority does not extend to determining
11 compliance with zoning codes, unless they have
12 been made part of the applicable master
13 program, approved by the Department of
14 Ecology, thus attaining the status of
15 regulations under the [shorelines] statute.
16 RCW 90.58.100, See Severns v. DOE, PCHB No.
17 80-2 (September 29, 1980). There is no
18 showing of such incorporation here.

19 The hearing in this case was held on November 7, 1985. Witnesses
20 were sworn and testified, exhibits were admitted and examined,
21 argument was heard.

22 Subsequently the parties submitted written arguments and responses
23 thereto. In the course of this final briefing, the County proposed
24 that the two permits be remanded to the County Commissioners to
25 clarify their approval. Both Hammer and the Knapps opposed such a
26 remand.

27 After considering the record, the Board has determined to deny the
County's request and to decide these cases on the merits. Therefore,
on the basis of the testimony, evidence and contentions of the

1 parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Port Madison Bay is a narrow, irregular harbor on Bainbridge
5 Island in Kitsap County. It is already extensively developed on both
6 sides with docks jutting into the water to serve residential uplands.
7 The numerous docks have been described as creating a "porcupine
8 effect." In these terms, the proposals at issue would add two more
9 quills to an existing porcupine.

10 II

11 Hammer wants to build a new dock to serve property on Port Madison
12 Bay where he maintains a residence. The Knapps want to do the same
13 thing on the parcel next door where their residence is located. The
14 two parcels are on the north side of the bay on either side of a small
15 cove. The indentation of the cove tends generally toward the north.
16 Hammer's land is to the west; the Knapp's is to the east.

17 After Hammer's application (# 395) was filed on April 24, 1983, a
18 number of efforts were made to get Hammer and the Knapps together on a
19 joint dock project. In the end nothing came of these efforts. Knapp
20 applied (# 442) for his own dock on January 30, 1985.

21 Next to the Knapps to the east is property owned by the Strong's.
22 Since the Hammer application was filed, the Strong's have applied for,
23 had approved (October 1, 1984), and built a dock serving their
24 property. (It is one of several new docks in the immediate area
25 approved in the recent past.) The parcel next east from the Strong's

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1 also has its own dock.

2 Immediately to the west of the parcel where Hammer proposes his
3 new dock is property already served by a sizeable dock with a
4 boathouse attached to the east side at the waterward end. Hammer had
5 a part interest in this lot which he expanded to full ownership some
6 time after his present dock application was filed. The next lot to
7 the west of this second Hammer parcel also has its own dock.

8 Neither the Knapps' property nor the "first" Hammer parcel now
9 have a dock. Both parcels lie within the semi-rural environment
10 designation under the Kitsap County Shoreline Master Program (KCSMP).

11 III

12 After it became apparent that no agreement would be reached
13 between Hammer and the Knapps, the County resumed active consideration
14 of Hammer's application. Notice was published in late 1984 and early
15 January 1985, stating simply that Hammer had filed an application for
16 a substantial development permit for the development of a "pier and
17 float." The general location was given by legal description and the
18 views of interested persons were solicited. Notice of the Knapp
19 application, identical in form, was published in early February 1985.
20 The project was described as "private dock, ramp and float for private
21 boat moorage."

22 Ultimately the County decided to take both applications up
23 together and to hold a public hearing about them. Notices of the
24 public hearing were sent to adjacent property owners on February 19,
25 1985. Enclosed with these notices were site plans submitted by Hammer

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1 and by Knapp. The Hammer plan bore the date "revised 8-2-83." The
2 Knapp plan was dated "1-5-85."

3 The hearing on both applications was held on March 18, 1985. The
4 commissioners deferred a decision. On April 22, they took the permits
5 up again and determined to approve them both. At the time of the
6 hearing and in subsequent deliberations the Commissioners had before
7 them the site plans identified above.

3 IV

9 Between the Hammer and Knapp properties along a north-south
10 alignment there is asserted by the Knapps to be a 30 foot strip which
11 has the status of a public road (#61). This assertion is disputed by
12 Hammer. The County has taken various positions. We render no opinion
13 on the matter.

14 We note, however, the following from the minutes of the Kitsap
15 County Board of Commissioners for April 22, 1985:

16 Chairman Horsley explained that the
17 Prosecutor's Office had been requested to
18 provide a legal opinion regarding the status
19 of "Road #61" - whether it ended at the water
20 or extended to the quarter-section corner in
the bay. The opinion was that it did not
extend over the tidelands into the bay.

20 V

21 The Hammer property to be served by his dock project has been
22 short platted into three lots. (SP #1900). The dock is proposed to
3 serve as a joint use dock for all these lots.

4 The Hammer permit, issued on April 22, 1985, authorized a "pier
5 and float" upon this described property subject to the following

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1 staff report for the permit "supplementing those findings with the
2 requirements stated in Rene Beam's memorandum dated April 22, 1985."

3 The staff report for the Hammer application recommended expansion
4 of the Hammer pier on the adjacent parcel rather than building the new
5 pier. However, the staff report for the Knapp proposal stated:

6 The subject application for Substantial Development
7 Permit #422 (Knapp) proposes an "L" shaped float
8 which accesses from the west. At the same time,
9 Hammer, who owns property to the west of Knapp, has
proposed a pier for the use of 3 lots created by
Short Plat 1900. This proposal also includes an
"L" shaped float with access from the east.

10 In order to avoid a navigational conflict, Knapp
11 will need to reposition the float on the proposed
12 pier (SDP # 422) so the access will be from the
east. The repositioning will alleviate
navigational conflicts with the Hammer's proposal.

13 Rene Beam's memorandum of April 22, 1985 was designed as a
14 solution which would allow both the Hammer (#395) and Knapp (#442)
15 permits to be approved. She recommended the following:

16 1. SDP #442 (Knapp) is to be approved with the
17 float facing east. The angle of the pier should be
18 altered so as to be at a heading of south 15
degrees from the shoreline.

19 2. The existing Hammer pier with floating boats
20 shall remain with the boathouse being moved to the
western side of the existing pier.

21 3. SDP #395 shall be approved subject to the pier
22 commencing at the 30 foot shoreline access of SP
23 #1900. This would be to the west of Mr. Hammer's
24 current residence. The new pier should follow
approximately the same angle as the existing Hammer
pier and should maintain a minimum distance of 40
feet.

25 4. The right-of-way known as #61 shall remain open
for public access.

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express conditions:

1. All appropriate state and federal permits shall be obtained.
2. The moorage of boats is limited to SP #1900 property owners' own pleasure craft and guests.
3. There shall be no live-aboard moorage at the pier.
4. The existing pier with floating boats shall remain, with the boathouse being moved to the western side of the existing pier.
5. The pier shall commence at the 30-foot shoreline access of SP #1900. This would be west of Mr. Hammer's current residence. The new pier should follow approximately the same angle as the existing Hammer pier and should maintain a minimum distance of 40 feet.
6. The right of way known as #61 shall remain open for public access.

VI

In the public hearing for the Knapps' application, Mr. Knapp stated that he was planning to short plat his property in the future and had designed the dock accordingly. His design had the float at the end facing west.

The Knapps' permit issued on April 22, 1985, authorized a "private pier, ramp and float" upon his described property subject to the following express conditions:

1. All appropriate state and federal permits shall be obtained.
2. The moorage of boats is limited to the property owners' own pleasure craft and guests.
3. There shall be no live-aboard moorage at the pier.
4. The float shall face east. The angle of the pier should be altered so as to be south 15 degrees east from the shoreline.
5. The right-of-way known as #61 shall remain open for public access.

VII

The Commissioner's minutes for April 22, 1985, reflect that the approval of each permit incorporated by reference the findings of the

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VIII

Taking the permit approval documents as a whole, it is clear that the County rejected the recommendation to limit Hammer to an expansion of his existing dock and approved new docks for both Hammer and Knapp, subject to the configuration and placement changes called for in the express permit conditions.

We find, that the physical dimensions of the structural parts of the two proposals were approved as shown on the previously identified site plans which the Commissioners had before them at the time of decision, including the ratio of elevated pier to floats in each instance.

However, no detailed, to-scale drawings of the configuration and locational changes made by the Commissioner's in their approval existed at the time the approval occurred.

IX

After approval, the permit "package" for each permit was forwarded to the Department of Ecology for review and assignment of the "date of filing" pursuant to RCW 90.58.140(6).

In explanation of the entry "drawing describing proposed project," the letter of transmittal for both permits stated the following:

The orientation of the approved pier has been changed from the original site plan submitted with the application and to the U.S. Army Corps. A new drawing shall be circulated by the Corps which represents these changes.

Ecology refused to accept either the Hammer or the Knapp permit for filing until finalized site plans were submitted. The County

1 contacted the permittees who had plans drawn up.

2 In the Knapp's case, the plans drawn and resubmitted show the
3 float repositioned to the east as required. But, the orientation to
4 the heading of south 15 degrees east from the shoreline is made for
5 the floating segment only. The 60 feet of elevated pier is left at
6 its original orientation.

7 Hammer's case is slightly more complicated because nothing in the
8 record shows "the 30 foot shoreline access of SP #1900" where the pier
9 is supposed to commence. However, from their arguments, it is
10 apparent that both permittees understand the approval to mean, that the
11 shoreward end of the new Hammer dock is to be within the 30 feet of
12 the "first" Hammer parcel farthest from County Road No. 61. This
13 interpretation is consistent with the requirement that the new pier
14 "follow approximately the same angle as the existing Hammer pier and
15 should maintain a minimum distance of 40 feet." Accordingly, we find
16 such to have been the Commissioner's intent.

17 Hammer's revised plan, drawn and submitted after the permit
18 decision, locates the shoreward end of the pier outside of this 30
19 foot area and further to the east, ostensibly to accommodate shore
20 conditions. The difference is approximately ten feet. The waterward
21 end of the pier is consistent with the Commissioner's approval.

22 X

23 On receipt of the revised drawings, Ecology assigned a "date of
24 filing" and these appeals followed. But, the drawings were never
25 reviewed by the Commissioners for consistency with their approval

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1 ruling.

2 XI

3 We find that both of the resubmitted drawings varied slightly from
4 the Commissioner's approval. We find, further, the terms of approval
5 were sufficiently clear that the drawings could have complied with
6 them. The permittees simply chose, for their own reasons, to engage
7 in a little further redesign work.

8 XII

9 The evident intention of the Commissioners was to accommodate the
10 two docks while attempting neither to impinge on public shoreline
11 access via the alleged county road nor to interfere with access to
12 existing private docks of the other side of each proposed structure.

13 We find that, in terms of these objectives, construction according
14 to the revised site plans, submitted after the approvals, would not
15 have a negative effect.

16 Where the Knapps are concerned, the redesign in the drawings
17 appears to be an improvement in terms of minimizing the potential for
18 conflict with the Strong's dock. Where Hammer is concerned the ten
19 feet of variation at the shoreward end would have a negligible impact
20 on public access.

21 XIII

22 The docks along Port Madison typically extend across the tidelands
23 to the area of sufficient depth to moor pleasure craft at low water.
24 Both the proposed Hammer and Knapp docks must exceed 200 feet in
25 length to accomplish this.

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1 The two proposed docks would enclose to a greater degree the area
2 of unobstructed water available at high tidal conditions. They would
3 also narrow the area of open beach exposed at low tidal conditions.
4 But we do not believe the impact on public use of the area would be
5 adverse.

6 The tidelands of the cove between the proposed docks is sloping
7 and muddy. No evidence was presented that these tidelands are now
8 much used by the public. Likewise no significant present public use
9 of the area for boat launching or other navigational uses was shown.

10 Moreover, we were not persuaded that the area has a high potential
11 for the future development of greater accessibility. At most, the
12 public access from the uplands is a narrow 30 foot strip. To build a
13 public pier at this location would involve great practical
14 difficulties in light of inevitable problems of ingress and egress.
15 There was no evidence of any plan, imminent or remote, to build a
16 public facility of any kind at this location.

17 We find that no significant loss of recreational access to the
18 shorelines is likely as a result of the projects at issue.

19 XIV

20 No evidence was presented showing that the approval of these docks
21 was inconsistent with other development being permitted in the area
22 through the planning process. Indeed, the contrary appears to be true.

23 XV

24 The proposed Hammer dock was approved as a joint use facility for
25 the lots of SP #1900 only. The "existing Hammer dock" on the next

1 parcel west is intended to continue to serve the parcel to which it is
2 connected. No substantial navigational space advantage would attend
3 expending the existing dock to serve SP #1900, as opposed to building
4 a new joint use dock for that purpose.

5 XVI

6 Harbor lines have not been drawn in Port Madison Bay and we were
7 not convinced that the proposed Hammer structure would project beyond
8 the minimum reasonably necessary to service the vessels contemplated
9 for moorage there, nor that a hazard to navigation would be created.

10 The Hammer project does appear to involve more elevated pier area
11 than other moorage in the area brought to the Board's attention.

12 XVII

13 Hammer made his application for permit on a form provided by the
14 County. He filled in all the spaces on the form he was asked to fill
15 in, but certain material was omitted from the site plan. The local
16 officials did not fill in the blank relating to the nature of the
17 existing shoreline.

18 The permit application process is an evolution of information
19 acquisition. During its course details of a project may change.
20 Here, for example, the original concept to serve one lot was changed
21 to a joint use pier for all of SP #1900.

22 There is no evidence that the County lacked any of the information
23 sought in the application form, or were in any respect misled by the
24 information provided, at the time of making their decision.

25 We find that the discrepancies in the application submitted were

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minor and, in the final analysis, harmless.

We find, further, that at the time of the public notice published in late December 1984 and early January 1985, the status of information accompanying Hammer's application in the County's file was sufficient to allow meaningful public participation in the permit process.

XVIII

With his original application, on April 21, 1983, Hammer submitted an Environmental Checklist (or Environmental Clearance Worksheet), again on a form provided by the County. We find that the information contained in the checklist when submitted was substantially accurate. The County could have, but did not, require the applicant to provide additional information. On June 22, 1983, the County issued a final Declaration of Non-Significance for the project. There is no evidence that this decision was substantively incorrect at the time it was made.

XIX

The evidence does not support a conclusion that the Knapp dock as shown on the revised site plan (submitted after the permit was issued) would be a unbuildable structure, practically.

XX

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

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CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.

II

We review decisions on substantial development permits for consistency with the applicable master program and the provisions of chapter 90.58 RCW (the Shoreline Management Act). RCW 90.58.140(2)(b).

III

Seven issues were preserved for hearing in the Pre-Hearing Order. One additional issue is before us as a result of our declining to grant summary judgment. We will take these issues up in the order listed in the Pre-Hearing Order.

The burden of proof is on the appealing party. RCW 90.58.140(7).

IV

Is there a loss of recreational access to the shoreline here created by the granting of the Hammer and/or Knapp permits in violation of RCW 90.58.020?

The policy of RCW 90.58.020 is to implement a planning process to limit development along the state's shores to projects which by function belong on or near the water. The policy emphasizes environmental protection, shoreline access and navigation.

Here we are concerned with the building of docks, a generally favored type of shoreline development, and the impact of allowing this on public access, another priority item.

Of course these private docks in a limited way improve access-the

1 Hammer dock in particular, since it is to be a joint use facility.
2 But the question posed concerns the effect these structures will have
3 on the ability of the public at large to enjoy the beach and water,
4 now and in the future.

5 On the record before us, we could not find a significant present
6 or potential negative effect on recreational access, assuming the
7 existence of a county road leading to the shore between the two
8 proposed docks.

9 Weighing the several values the policy of the Act seeks to
10 promote, we conclude that the approval of these projects does not
11 impinge on recreational access in a manner violating RCW 90.58.020.

12 V

13 Is there a circumstance of uncoordinated and piecemeal development
14 occurring on the north side of the Port Madison Bay with the subject
15 permits being approved in their current form, in violation of RCW
16 90.58.020?

17 The planning process contemplated by RCW 90.58.020 is intended "to
18 prevent the inherent harm in an uncoordinated and piecemeal
19 development of the state's shorelines."

20 The evidence shows that many residential docks exist on Port
21 Madison Bay, a number of them of recent origin. However, this trend
22 appears to be the product of the very planning process established by
23 the Act.

24 Under the Kitsap County Shoreline Master Program (KCSMP), piers
25 and floating docks are permitted in the semi-rural environment.

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1 KCSMP, P. 7-3. Within this general planning parameter, each
2 application for such a development is individually assessed to see if
3 it meets more detailed criteria for permitted uses.

4 In sum, we are dealing with a planned porcupine. Therefore, we
5 conclude that the policy of RCW 90.58.020 which seeks to eliminate
6 uncoordinated and piecemeal development is not violated by these
7 approvals.

8 VI

9 Is the proposed moorage at issue in keeping with KCSMP provisions
10 on joint use piers and docks, Section V first policy (page 7-13) and
11 Regulations, Section V-B (3) (4) (page 7-14)?

12 The first policy of Section V (Boating Facilities) (under Part 7,
13 Use Activities) of the KCSMP reads as follows:

14 The cooperative use of piers and floating docks
15 should be encouraged. Priority should be given to
16 the use of community piers and docks in all new
major waterfront subdivisions.

17 Use Regulations V-B(3) (4) state:

18 3. Individually owned, single family residence
19 piers and docks are permitted where it can be shown
that a joint use moorage facility is not feasible.

20 4. Joint use moorage facilities should be required
21 for residential developments, and should be
encouraged, when feasible for recreational
developments and commercial developments.

22 We do not understand the appellants Knapp to argue that their own
23 dock proposal does not fit the criterion for allowing single family
24 residence piers. Any other arrangement on their property is, thus,
25 conceded to be infeasible. But, the Knapps do argue that Hammer's

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1 joint use dock does not, under the circumstances, involve enough joint
2 use.

3 The "existing Hammer dock" is not under review. No permit is
4 requested for it. The question is whether another dock may be built
5 to accommodate increased moorage attributable to the adjacent Hammer
6 short plat.

7 Joint use docks are intended to concentrate development and thus
8 save open water space for navigation. This aim is not advanced here
9 where no substantial navigational advantage will be achieved by
10 expanding the existing dock. Further, the joint use policy tends to
11 lack realism in Port Madison Bay given the level of dock development
12 already there. The planning process appears to have viewed the
13 addition of a new dock by Hammer "with a practical eye on the densely
14 developed portion of shoreline in the immediate vicinity." Department
15 of Ecology v. Ballard Elks, 84 Wn.2d 551, 559, 527 P.2d 1121 (1974).

16 We are not dealing here with a "new major waterfront
17 subdivision." Hammer's short plat contains three lots. The new dock
18 he proposes is a joint use dock, such as the KCSMP policy regulations
19 call for. Under all the circumstances, we do not think that because
20 even more joint use could be accommodated by expanding a neighboring
21 structure, the new dock is a violation of the master program.
22 Therefore, we hold that the referenced KCSMP provisions on Boating
23 Facilities are not violated by its approval.

24 VII

25 Is the scale and design of the proposed Hammer dock in keeping

1 with RCW 90.58.020 and KCSMP policies at Section V (2)(5) and (6)?

2 The policy of the Act calls for fostering uses which are
3 "reasonable and appropriate" in light of various values sought to be
4 advanced. Among these are aesthetic qualities and prevention of
5 damage to the natural environment.

6 Appellants argument here is that Hammer's dock would include more
7 elevated pier and less floating dock than those of his neighbors.
8 There was no evidence that this would be unaesthetic or in any other
9 way environmentally adverse.

10 KCSMP Section V (2) states:

11 Where harbor lines do not apply, piers and docks
12 shall project the minimum distance necessary to
13 service the appurtenant vessels and shall not
14 create a hazard to navigation.

15 Appellant did not carry the burden of showing that this provision
16 would be violated by Hammer's new facility.

17 KCSMP Sections V (5) and (6) apply to docks for commercial vessels
18 and freshwater docks respectively and are inapplicable here.

19 We hold that the scale and design of the Hammer dock was not shown
20 to violate the Act or the applicable master program.

21 VIII

22 Is the final permit for the proposed Hammer dock complete and
23 accurate in accordance with WAC 173-14-070, 100 and 110?

24 Chapter 173-14 WAC is a regulation adopted by the Department of
25 Ecology, pursuant to RCW 90.58.140(3), for the conduct of the
26 shorelines permit system by local government.

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1 WAC 173-14-070 gives the requirements for public notice. Under
2 this section published notices are to follow a prescribed form and
3 additional notice is given by mail or posting or other appropriate
' method. There is no evidence that these procedural and formal
5 requirements were not met.

6 WAC 173-14-100 sets forth review criteria for substantial
7 developments, including consistency with "the provisions of this
8 regulation." WAC 173-14-110 establishes a form for applications for
9 permits.

10 Hammer's application, as information was developed in the permit
11 process, was adequate to provide the County with an informed basis for
12 making a decision on the consistency of his proposal with the
13 Shoreline Management Act and the KCSMP. Accordingly, we conclude that
14 any variation from the formal application requirements of his initial
15 submittal was without legal consequence.

16 Was the final design of the dock improperly delegated to Kitsap
17 County staff?

18 Whenever, the deciding authority imposes conditions on a shoreline
19 permit which redesign or re-orient the project, the drawings which
20 accompanied the application will not be accurate. It is unavoidable
21 that any drawings reflecting what was actually approved will be
22 prepared after the approval.

23 Preferably, any such approval should be conditioned on the later
24 submission of conforming drawings which the decision makers would then
25 have to endorse as being consistent with their decision. However,

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1 this process is not essential for the issuance of a valid decision.
2 All that is required is that the permit contain sufficient detail to
3 enable meaningful review for consistency with chapter 90.58 RCW and
4 the implementing regulations. Hayes v. Yount, 87 Wn.2d 280, 552 P.2d
5 1038 (1976).

6 We are convinced that Kitsap County's approval contained the
7 requisite level of detail to enable our review to proceed. Drawings
8 could have been prepared which were completely faithful to the
9 County's decision.

10 Although the drawings submitted after the decision do not reflect
11 what the Commissioners decided with total accuracy, this doesn't mean
12 the final design decisions were delegated to the staff. It simply
13 means the actual decisions and the drawings are to some degree
14 different. The drawings were never made part of the decision.
15 Submitting them to Ecology did not operate, by some alchemy, to make
16 them so.

17 At this juncture we have several options. We could simply
18 disregard the drawings, and render our opinion on the County's
19 decision without them. We could remand this matter without decision
20 for another round of local review. Or we could consider the drawings
21 in the context of our de novo review function, giving us the latitude
22 to evaluate matters which were not before the Commissioners. See San
23 Juan County v. Department of Natural Resources, 28 Wn.App. 796, 626
24 P.2d 995 (1981).

25 We choose the latter course and direct that the post-decision
26 drawings in question be incorporated into the permits and made a part
27

1 of them. We do this because on review of the entire record we do not
2 think the drawings do violence to the purpose and intent of the
3 County's approval. So long as a condition is added insuring access of
4 all Short Plat #1900 owners and guests to the new Hammer dock, we
5 think that construction of the facilities in accordance with the
6 drawings will be consistent with the Act and the master program.

7 IX

8 Was the Environmental Clearance Worksheet for the Hammer dock
9 complete and accurate under terms of the State Environmental Policy
10 Act (SEPA) and WAC 197-11-742, 960 and 315?

11 SEPA calls for a threshold decision as to whether a proposal is a
12 major action significantly affecting the quality of the environment.
13 Juanita Bay Valley Community Ass'n. v. Kirkland, 9 Wn.App. 59, 510
14 P.2d 1140 (1973). A declaration of negative significance on the
15 Hammer proposal was made.

16 Since appellant does not contend that this threshold decision was
17 wrong when made, his assertion that the checklist used in making it
18 was incorrect is irrelevant. In any event, we have found that the
19 information in the checklist when submitted was substantially accurate.

20 Appellant's real argument is that the threshold decision should
21 have been made again when the Hammer application was revived, in light
22 of intervening changed circumstances. This is a completely different
23 issue than the one contained in the Pre-Hearing Order on the basis of
24 which the case was tried. It is not properly before us. We decline
25 to consider it.

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X

Did the permit for the proposed Knapp dock authorize an unbuildable structure, practically?

We decide this question in the negative. There is insufficient evidence to support such a conclusion.

XI

Was the reinvigoration of the Hammer dock application review at Kitsap County and first consideration of the proposed Knapp dock improperly advertised and considered under terms of WAC 173-14-070, 080 and KCSMP at pages 8-1, 2?

WAC 173-14-070 provides for the publication and other distribution of notice about a shoreline project "upon receipt of a proper application." WAC 173-14-080 makes public hearings a matter of local option. The KCSMP at pages 8-1, 2 substantially reiterates the cited state regulations, with an additional notice requirement when a hearing is held.

In setting forth the form to be used in giving notice, WAC 173-14-070 requires only enough description of what is proposed to inform the reader of the general nature of the project.

Appellant's contend that the notices published on the Hammer application in late 1984 and 1985 were defective because no "proper application" was before the County when they were published. We conclude that a "proper application" for purposes of WAC 173-14-070 is sufficient information in the County file to inform members of the public, put on inquiry by the notice, of the major features and

1 purpose of the proposed project.

2 This does not mean that every detail must be nailed down before
3 publication. As noted, the permit process may involve a project in a
4 certain evolution. It means the availability of enough information
5 for meaningful public participation in the permit process. We believe
6 that standard was met here and, hold that the applications were
7 "proper" when the challenged notices were published.

8 XII

9 These matters should be remanded to the County to reissue permits
10 which add conditions to the following effect:

11 1. Appropriate provisions for use of and access to the Hammer
12 dock by the owners or occupants of the lots within Short Plat #1900
13 shall be made and shall be approved by Kitsap County prior to
14 construction of the dock; and

15 2. The Hammer dock (No. 395) shall be constructed strictly in
16 accordance with the layout depicted in Exhibit R-46 to these
17 proceedings.

18 3. The Knapp dock (No. 442) shall be constructed strictly in
19 accordance with the layout depicted in Exhibit R-47 to these
20 proceedings.

21 XIII

22 Any Finding of Fact which should be deemed a Conclusion of Law is
23 hereby adopted as such.

24 From these Conclusions the Board enters this

25
26 Final Findings of Fact,
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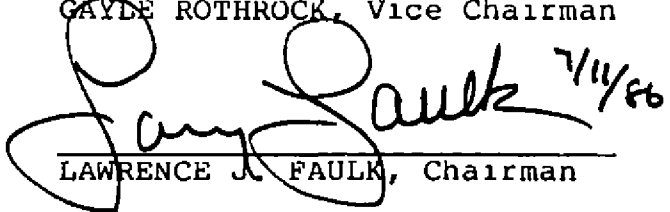
ORDER

The action of Kitsap County in issuing shoreline substantial development permits in response to applications No. 395 and 442 are affirmed, except insofar as the matters stated in Conclusion of Law XII are concerned. The permit is remanded to the City for reissuance in accordance therewith.

DATED this 11th day of July, 1986.


SHORELINES HEARINGS BOARD

See Dissenting Opinion -
GAYDE ROTHROCK, Vice Chairman

 7/11/86
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member

See Dissenting Opinion
NANCY BURNETT, Member


LES ELDRIDGE, Member


RODNEY M. KERSLAKE, Member

1 GAYLE ROTHROCK/NANCY B. BURNETT--DISSENTING OPINION

2 THESE MATTERS, the consolidated appeals of the granting of two
3 shoreline development permits for docks in Port Madison on Bainbridge
4 Island, came on for hearing before the Board on November 7, 1985, at
5 the Board's hearing room in Lacey. Participating in the decision
6 herein for and as the Board are Gayle Rothrock (presiding officer),
7 Lawrence J. Faulk, Wick Dufford, Nancy R. Burnett, Rodney M. Kerslake,
8 and Les Eldridge.

9 Appellants appeared and were represented by John C. Merkel and
10 James Tracey of the law firm of Merkel, Caine, Jory, Donohue, and
11 Duvall. Respondent/permittee appeared and was represented by Thomas
12 C. O'Hare of the law firm of Smith and O'Hare. Respondent county
13 appeared and was represented by Patricia K. Schafer, Deputy
14 Prosecuting Attorney.

15 Attorneys and parties participated in a pre-hearing conference and
16 a settlement conference on August 13, 1985; out of which sprang a
17 Pre-Hearing Order with agreed issues articulated. These were
18 challenged, but were sustained, and became the controlling issues at
19 the hearing. At various times motions to dismiss and special requests
20 to remand were posed to the Board and all have been rejected.

21 At hearing witnesses were sworn and testified, exhibits were
22 examined and admitted, and argument was heard. Written argument was
23 later submitted. From the testimony, evidence, and contentions of the
24 parties, the Board makes these

25
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FINDINGS OF FACT

I

William and Barbara Knapp are property owners on a forested shorefront lot with a single family residence thereon located on the north side of Port Madison Bay on Bainbridge Island. Port Madison Bay is narrow, irregular, and has poor flushing characteristics. Appellant's acreage sits at a southwest to northeast angle adjacent to an old county road right-of-way at a bend in the northern shoreline.

On the west side of the old right-of-way are two adjoining parcels of forested property owned by Kenneth S. Hammer. Hammer's properties front the meander line of Port Madison Bay where the bank line runs horizontal and the properties sit more nearly vertical. The two properties have one or two structures on them. All these cove shorefront properties are classified as Semi-Rural in the Kitsap County Shoreline Master Program (KCSMP). The properties are on Shorelines of Statewide Significance.

II

Knapp and Hammer each desire to have moorage. Hammer already has a north-south lying pier and float with a covered boathouse and long finger pier abutments for tie-up docking of boats.

Eighteen months ago, Knapp had an interest in sharing use of a pier and float with his neighbor on the east, Strong, but Strong independently pursued approval of a dock permit with Kitsap County. After county approval of a single owner dock, Strong built the dock at a southwest-to-northeast direction. The two adjacent lots to the east

1 of Strong each have docks.

2 III

3 In 1983, Hammer filed an application for a 225-foot joint use dock
4 to serve several residences on one or both of his lots; achieved
5 through shortplat subdivision of property.¹ The dock proposal drew
6 considerable controversy and some media attention at each of several
7 public hearings. In testimony at this Board's hearing, Hammer
8 professed he did not care about the particulars of dock or pier design
9 for his second dock, then or now. He simply wanted full accommodation
0 of all his vessels and those adjoining. The county land use review
11 staff recommended denying the permit application.

12 After some public hearings in 1983, Hammer, on July 6th, asked
13 Knapp and Strong if they would be interested in sharing a dock on
14 Hammer's property. Each declined the offer. Several unresolved
15 matters concerning that dock, tidelands property lines, upland
16 development and county road 61's 30-foot right-of-way caused the
17 county commissioners not to take final action. The dock proposal was
18 tabled and not brought to life again until two years ago.

19 IV

20 William and Barbara Knapp finally filed an independent application
21 for a permit for a boat pier, ramp, and float with the county on
22 January 30, 1985. As was the case with the Strong and Hammer dock
23 application, proper advertisement and notice was made and a
24

25 ¹/ During testimony at hearing, it was revealed Hammer had filed for
26 a shortplat with Kitsap County; application No. 1900.

1 Declaration of (environmental) Non-Significance was issued.

2 The land use review staff issued a report recommending approval of
3 a pier and float and public hearings were held.

4 V

5 During the review of the staff report and the conduct of the
6 public hearings, much controversy arose about the "tabled" Hammer dock
7 proposal, which Knapp claimed both infringed on his tidelands and
8 reduced the potential public access to water from the end of county
9 road 61 right-of-way. Controversy also swelled over the
10 ever-increasing number of docks on tidelands in Port Madison Bay which
11 were threatening to impede navigation, block shoreline access,
12 preclude certain low-impact forms of recreation (swimming,
13 windsurfing, and casual fishing) and depreciate aesthetically the
14 water views. A "porcupine effect" with piers and docks was developing.

15 VI

16 It developed from a Commissioner's inquiry that the Hammer and
17 Knapp dock proposals would be handled simultaneously by the Board of
18 Commissioners, even though Hammer and Knapp had come to no
19 accommodation with one another and no property surveys tidelands
20 ownership documentation, specific staff reports, or county road 61
21 vacation proceedings had come to the forefront since Hammer's proposal
22 was first tabled.

23 The land use staff issued a memorandum with design requirements
24 for each of the two docks and suggested conditions upon which the
25 docks would be built. A visual display was developed for the

Commissioners to view. No formal proposed permit drawings were made. On motion of the Commissioners of April 22, 1985, the recommended design requirements and conditions were adopted as both the Knapp (Permit 442) and Hammer (Permit 395) dock requests for permit were approved.² The parties and staff were instructed to finish the paperwork accordingly and incorporate findings of another staff memo

2/ Commissioners' Conditions on Permit 442:

1. All Appropriate state and federal permits shall be obtained.
2. The moorage of boats is limited to the property owners' own pleasure craft and guests.
3. There shall be no live-aboard moorage at the pier.
4. The float shall face east. The angle of the pier should be altered so as to be at a heading of south 15 degrees east from the shoreline.
5. The right-of-way known as #61 shall remain open for public access.

Commissioners' Conditions on Permit 395:

1. All Appropriate state and federal permits shall be obtained.
2. The moorage of boats is limited to SP (shortplat) #1900 property owners' own pleasure craft and guests.
3. There shall be no live-aboard moorage at the pier.
4. The existing pier with floating boats shall remain, with the boathouse being moved to the western side of the existing pier.
5. The pier shall commence at the 30-foot shoreline access of SP #1900. This would be to the west of Mr. Hammer's current residence. The new pier should follow approximately the same angle as the existing Hammer pier and should maintain a minimum distance of 40 feet.
6. The right-of-way known as #61 shall remain open for public access.

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1 of March 13, 1985. Hammer asked the county staff for an
2 administrative adjustment in the conditions on his permit four days
3 after the permit approval vote.

4 VII

5 The combination of both permit materials, plus a new dock drawing
6 (site plan) done for Hammer to send to the Corps of Engineers, were
7 summarily packaged up and filed with the State Department of Ecology
8 (WDOE) on behalf of Permits 395 and 442. The documents were received
9 by WDOE on June 6, 1985. On June 18, 1985, a Kitsap County official
0 wrote Hammer asking for corrective action on his shortplat No. 1900
1 filing based on necessary county road No. 61 access to his proposed
2 dock.

3 VIII

4 On July 3, 1985, appellants Knapp, feeling aggrieved by the
5 apparent final designs of both the Knapp and Hammer docks, filed two
6 requests for review with the Shorelines Hearings Board petitioning for
7 rejection of the Hammer dock and a remand of his own permit. The
8 appeal was later amended to ask for any other forms of relief the
9 Board deemed appropriate.

10 IX

11 Any Conclusion of Law hereinafter determined to be a Finding of
12 Fact is hereby adopted as such.

13 From these Facts, the Board comes to these

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these persons and these matters.
4 Chapter 90.58 RCW.

5 II

6 Under the Kitsap County Shorelines Master Program (KCSMP)
7 regulations on boating facilities at page 7-13, piers and floating
8 docks are permitted outright in the Semi-Rural environment. Both of
9 these proposed structures qualify as piers or floating docks and their
10 regular review through the shoreline substantial development permit
11 process at the county by the staff was appropriate.

12 III

13 The KCSMP encourages joint use of docking facilities.

14 The cooperative uses of piers and floating docks
15 should be encouraged. Priority should be given to
16 the use of community piers and docks in all new
17 major waterfront subdivisions. KCSMP, p.7-13,
18 policies.

19 Here, several single-owner docks have been approved in a narrow
20 and irregular bay in recent years and now a trend in shortplattling
21 shorefront properties is propelling some owners to add docks in
22 anticipation of the successful subdivision and sale of property.

23 One of these parties, Hammer, has dock access already providing
24 moorage for several boats and Knapp could be in a position to further
25 explore a joint use dock use with Hammer or Strong. The KCSMP
26 policies and regulations are not advanced if the Knapp and Hammer
27 docks are separately permitted, especially when also considered in

28 Dissenting Opinion--Rothrock/Burnett
29 SHB No. 85-17 and 85-18
30 7

light of another boating facilities policy:

Size and length of piers and floating docks should be the minimum that provides the required service. KCSMP, p.7-13, Policies.

Since there is no guarantee of a filled-out subdivision for Hammer, there is little justification for authorizing more than one dock. Rather, amplification of the existing Hammer dock would be more in keeping with the KCSMP and the policies of the Shorelines Management Act (SMA).

IV

Caution against installing boating facilities which interfere with navigation and low-impact recreational uses of the water is called for in the KCSMP Policies at p.7-13:

Size and length should also be a minimum interference to navigation and other uses of the water area.

Boat movement in and out of the bay, swimming, windsurfing, and passive uses of the shoreline end of county road 61 are all made much more difficult by the permitting of these two proposed docks. The docks would add to the porcupine quill effect developing on that shoreline.

V

The loss of recreational access to the shoreline area offends the policies of the SMA which relate to Shorelines of Statewide Significance at Chapter 90.58.020 RCW. The natural character of the shoreline becomes more disturbed than is necessary to achieve adequate moorage, certain recreational values are thwarted, and public access

1 is not realistically effected either from the water or from the end of
2 county road #61.

3 The legislature declares that the interest of all
4 the people shall be paramount in the management of
5 shorelines of state-wide significance. The
6 department, in adopting guidelines for shorelines
7 of state-wide significance, and local government,
8 in developing master programs for shorelines of
9 state-wide significance, shall give preference to
10 uses in the following order of preference which:
11 (1) Recognize and protect the state-wide interest
12 over local interest; (2) Preserve the natural
13 character of the shoreline; (3) Result in long-term
14 over short-term benefit; (4) Protect the resources
15 and ecology of the shoreline; (5) Increase public
16 access to publicly-owned areas of shorelines; (6)
17 Increase recreational opportunities for the public
18 in the shoreline; (7) Provide for any other element
19 as defined in RCW 90.58.100 deemed appropriate or
20 necessary. (Emphasis added).

21 VI

22 Drawings and other visual representations available to the county
23 staff and the Board of Commissioners, and data on the applicability of
24 the "cove rule," actual tidelands ownerships, right-of-way status, and
25 placement of previously-approved docks did not provide the explicit
26 information base to the Board of Commissioners they sorely needed to
27 evaluate the acceptability of additional docks in Port Madison Bay. A
28 sound decision could not be made without better data. WAC 173-14.

29 As a result, approvals to both permits were given with no final
30 precise site drawings which matched the approval conditions. The
31 Hammer permits sudden emergence from hibernation into the sublight of
32 scrutiny, comparison, and ultimate approval was an action typified
33 more by expediency than by full compliance with permit procedures,

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36
37

1 effected in accordance with WAC 173-14.

2 VII

3 The State Department of Ecology, with whom these permits were
4 filed, has never been notified of the lack of consistency between site
5 drawings and the permit language. Therefore, the state has not been
6 in a position to certify a final filing and approval of, or objection
7 to, the sufficiency of these permits.

8 VIII

9 The state of the permits here before the Board on review is
10 peculiar. They have suffered from procedural flaws in their ultimate
11 handling and they substantively do not meet the tests appropriately
12 applied to them through application of the SMA and the KCSMP. As an
13 act of mercy, they should be set aside and the parties and Kitsap
14 County should do additional preparatory work before any dock
15 applications are again considered. The parties, the county, and this
16 Board have all stated, or heard stated, the need to re-think and
17 possibly re-craft these boat moorage facilities applications on Port
18 Madison Bay.

19 IX

20 Any Finding of Fact Determined to be a Conclusion of Law is hereby
21 adopted as such.

22 From these Conclusions the Board makes this
23
24
25

ORDER

Shorelines Substantial Development Permits Nos. 395 and No. 442
approved by Kitsap County are vacated.

DONE this 11th day of July, 1986.

SHORELINES HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman


NANCY R. BURNETT, Member